

Outside Sections

Police Training Surcharge

SECTION 4. Chapter 6 of the General Laws is hereby amended by inserting after section 116 the following section:-

Section 116 1/2. (a) Sums for the estimated expenses of providing annual in-service specialized and statutorily-mandated training programs conducted by the municipal police training committee for veteran and reserve municipal police officers and for those officers employed by agencies of the commonwealth who exercise police powers and receive this training from the municipal police training committee, including but not limited to environmental police officers and campus police officers of the University of Massachusetts and state colleges who exercise police powers, shall be paid to the commissioner of insurance by property and casualty insurance companies writing motor vehicle insurance policies in the commonwealth by means of a policy surcharge imposed upon the policyholder of any private passenger automobile policy issued by any property and casualty insurance company writing motor vehicle insurance policies in the commonwealth. These programs shall include new recruit training provided by the municipal police training committee; development and delivery of distance learning programs by the municipal police training committee; a standards and evaluations program for training courses and instructors of or certified by the municipal police training committee; the development and updating of training programs including curricula by the municipal police training committee, hiring, equipping, and training new state police recruits; and the development and operation of a state police cadet program including the hiring, equipping, and training of state police cadets, subject to appropriation, and the estimated cost of fringe benefits associated with this training hiring and employment. The amount of any surcharge shall be separately stated on either a billing or policy declaration sent to an insured. The rate of the policy surcharge shall be determined and adjusted annually by the commissioner of insurance to a rate sufficient to generate a surcharge to fund the expenses estimated by the secretary of public safety and security for the purposes described above.

(b) The policy surcharge shall be collected and remitted to the commissioner of insurance by the property and casualty insurance companies writing motor vehicle insurance policies in the commonwealth on a quarterly basis on or before the twenty-fifth day of the month succeeding the end of the quarter in which it is collected. Any company failing or refusing to collect and remit to the commissioner of insurance any policy surcharge or whose surcharge payments are not postmarked by the due dates for quarterly filing shall be liable for a penalty of up to \$100 for each day of delinquency, to be assessed by the commissioner of insurance. The estimated costs shall include an amount equal to the cost of fringe benefits as established by the secretary of administration and finance under section 5D of chapter 29. Any surcharge collected in a fiscal year but not expended by the municipal police training committee or department of state police for the purposes set forth in this section shall be retained by the commonwealth for use by the municipal police training committee or department of state police. The retained surcharge shall be credited against the amounts required to be collected under this section in the following year, and those required payments shall be reduced by the amount of this credit.

Summary:

This section provides a surcharge on motor vehicle insurance policies to support training of municipal police officers by the Municipal Police Training Committee and an annual state police class.

Shared Services for Executive Offices

SECTION 5. Chapter 6A of the General Laws is hereby amended by inserting after section 7 the following section:-

Section 7A. Each secretary may, notwithstanding any general or special law to the contrary, identify administrative processing activities and functions common to the state agencies within the executive office and

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may designate such functions as core administrative processing functions. To improve administrative efficiency and preserve fiscal resources, the secretary may direct that core administrative processing functions be performed by the executive office or by 1 or more state agencies designated by the secretary to perform those functions. Common activities and functions that may be designated as core administrative processing functions include without limitation human resource functions including payroll processing; information technology services; leasing and facility management services; financial management services, such as budgeting, procurement, contract management, and accounts payable/receivable functions; and other administrative processing functions. Upon designation of a function as a core administrative processing function, the secretary may direct that employees of each state agency who perform those functions be transferred to the executive office or to any state agency designated by the secretary to perform core administrative processing functions. Nothing in this section shall waive the responsibility of each agency head to certify obligations and expenditures for appropriations and other legally available funds of the agency pursuant to section 3 of chapter 7A, the responsibilities of an agency head pursuant to state finance law including but not limited to sections 19, 20, 24, 26 and 27 of chapter 29, and the responsibility of an agency head to certify work by employees of the agency pursuant to section 31 of chapter 29. An agency head may not delegate agency head signature authorization to any individual who is not an employee of the agency. The executive office or any state agencies designated to perform core administrative processing functions may charge the state agencies that receive such services for the reasonable costs of providing the services. Any employee transfers that occur in connection with the consolidation of core administrative processing functions within the executive office or state agencies shall not: (a) impair the civil service status of any such transferred employee who immediately before the effective date of this act either holds a permanent appointment in a position classified under chapter 31 or has tenure in a position by reason of section 9A of chapter 30; or (b) impair or change an employee's status, rights, or benefits under chapter 150E.

Summary:

This section authorizes each cabinet secretary to consolidate the performance of core administrative functions within the secretariat and to charge the relevant agencies accordingly.

Income-eligibility for Higher Education Adopted Student Fee Waivers

SECTION 6. The eighth paragraph of section 19 of chapter 15A of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding the following sentence:- No student shall be eligible for a tuition and fee waiver under this paragraph unless the student is eligible for MASSGrant assistance.

Summary:

This section limits public higher education fee waivers for adopted students to those eligible for the MASSGrant program.

Recovery of Accident Payments by State Agencies

SECTION 7. (A) Chapter 18 of the General Laws is hereby amended by striking out section 5G and inserting in place thereof the following section:-

Section 5G. (a) As used in this section, the following words shall have the following meanings:-

"Claimant", any person who suffers any loss from property damage, accident, illness, injury or otherwise for which monies may be provided by liability insurance, workers' compensation, or any other third party.

"Third party", any individual, agency, program, entity or insurer, including but not limited to the claimant's own insurer, that is or may be liable to pay monies on account of the claimant's loss.

"Date of the loss", the date on which the property damage, accident, illness, injury, or other incident occurs.

(b) When any claimant or the claimant's heirs, estate or legal representative receives payment from a liability or workers' compensation insurer or any other third party, the claimant or the claimant's heirs, estate or legal representative shall repay to the department the total of all public financial assistance benefits provided by the department on or after the date of the loss to or on behalf of the claimant, the claimant's spouse or children, and any other individual the claimant is required by law to support; but if on the date of the loss the claimant was

already eligible for public assistance benefits, the claimant or the claimant's heirs, estate or legal representative shall repay only any increase in financial assistance that occurred as a result of the accident, illness, injury, or other incident.

(c) The application for and receipt of benefits recoverable under this section shall, after notice to the third party, operate as a lien to secure repayment against monies which may be provided by said third party up to the amount of such benefits. But the department may also perfect its right to a lien against any monies which may come into possession of the claimant's attorney by giving notice to that attorney.

(d) Any person receiving public assistance benefits recoverable under this section shall assign to the commonwealth an amount equal to the benefits so provided from the proceeds of any such claim against the third party.

(e) A claimant shall, within 10 calendar days, notify the department in writing upon commencement of a civil action or other proceeding to establish the liability of any third party or to collect monies payable under accident, liability, or health insurance, workers' compensation, or from any other third party or source.

(f) The commonwealth shall be subrogated to a claimant's entire cause of action or right to proceed against any third party and to a claimant's claim for monies to the extent of assistance provided under chapter 118. The commonwealth shall also have a separate and independent cause of action to recover, from any third party, assistance provided to a claimant under that chapter, which cause of action shall be in addition to other causes of action. The commonwealth may, by attorneys employed or selected by it, commence a civil action or other proceeding to establish the liability of any third party or to collect such moneys, or may intervene as of right in any civil action commenced by a claimant against a third party. No third party shall require written authorization from the claimant before honoring the commonwealth's rights under this section.

(g) Failure of a claimant without good cause to provide notice as required under this section or to provide such further information deemed necessary by the department to pursue its rights under this section shall be grounds for termination of benefits. Notwithstanding any general or special law or rule or regulation to the contrary, an insurer doing business in the commonwealth shall provide information requested by the department of transitional assistance for use by the agency for the purpose of recovering public assistance benefits under this section.

(B) Chapter 118E of the General Laws is hereby amended by striking out section 22 and inserting in place thereof the following section:-

Section 22. (a) As used in this section, the following words shall have the following meanings:-

"Claimant", any person who suffers any loss from accident, illness, injury or otherwise for which monies may be provided by liability insurance, workers' compensation, or any other third party.

"Third party", any individual, agency, program, entity or insurer, including but not limited to the claimant's own insurer, that is or may be liable to pay monies on account of the claimant's loss.

"Date of the loss", the date on which the accident, illness, injury, or other incident occurs.

(b) When any claimant or the claimant's heirs, estate, or legal representative receives payment from a liability or workers' compensation insurer or any other third party as a result of a loss, the claimant or the claimant's heirs, estate, or legal representative shall repay to the executive office of health and human services the total of medical assistance benefits provided from monies allocated in the payment, settlement or compromise of claim or action, court award or judgment for medical expenses. Where the amount allocated to past medical expenses is insufficient to satisfy the executive office's claim for full recovery of medical assistance benefits paid, the executive office may assert its claim and recover from any allocation for future medical expenses.

(c) If any payment, settlement or compromise of claim or action, court award or judgment fails to specify what portion of the payment, settlement or compromise of claim or action, court award or judgment is in payment of medical expenses, it will be presumed that the payment, settlement or compromise of claim or action, court award or judgment applies first to the medical expenses incurred by the claimant in an amount equal to the medical assistance benefits paid.

(d) The executive office retains the right to dispute any allocation for medical damages that results in less than full recovery of medical assistance benefits paid and to have a hearing before a court of competent jurisdiction on the allocation of damages prior to or after disbursement of payment by the third party. The executive office shall not

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be precluded from enforcing its recovery rights from any payment, settlement or compromise of claim or action, court award or judgment that excludes the cost of medical assistance benefits paid. Notwithstanding anything in this section or any other general or special law to the contrary, where a claimant received medical assistance through a managed care organization, the executive office may recover the amount that the managed care organization paid for medical services provided.

(e) When any claimant or the claimant's heirs, estate, or legal representative receives payment from a liability or workers' compensation insurer or any other third party, the claimant or the claimant's heirs, estate, or legal representative shall repay to the division of health care finance and policy the costs attributable to services provided to the claimant that were paid by the Health Safety Net Fund, established under section 36 of chapter 118G.

(f) When any claimant or the claimant's heirs, estate or legal representative receives payment from a liability or workers' compensation insurer or any other third party, the claimant or the claimant's heirs, estate, or legal representative shall repay to the department of transitional assistance the total of all financial assistance benefits provided by the department on or after the date of the loss to or on behalf of the claimant, the claimant's spouse or children, and any other individual the claimant is required by law to support; but if on the date of the loss the claimant was already eligible for financial assistance benefits, the claimant or the claimant's heirs, estate or legal representative shall repay only the increase in financial assistance that occurred as a result of the accident, illness, injury, or other incident.

(g) The application for and receipt of benefits recoverable under this section shall, after notice to the third party, operate as a lien to secure repayment against monies which may be provided by said third party up to the amount of such recoverable benefits. But the department of transitional assistance, the executive office, and the division of health care finance and policy may also perfect their right to a lien against any monies which may come into possession of the claimant's attorney by giving notice to that attorney.

(h) If the monies available for repayment are insufficient to satisfy in full any competing claims of the executive office, the division of health care finance and policy, and the department of transitional assistance, then each shall be entitled to its respective pro rata share of such monies as are available.

(i) Any person receiving public assistance benefits recoverable under this section shall assign to the commonwealth an amount equal to the benefits so provided from the proceeds of any such claim against the third party.

(j) A claimant, or if represented by counsel the claimant's attorney, shall, within 10 calendar days, notify the executive office in writing upon engaging in recovery activity, including but not limited to making any insurance claim or sending a demand letter, and upon commencement of a civil action or other proceeding to establish the liability of any third party or to collect monies payable under accident, liability, or health insurance, workers' compensation, or from any other third party. No settlement, compromise, judgment or award or any recovery in any claim or action shall be made final without first giving the executive office, the division of health care finance and policy, and the department of transitional assistance such written notice and a reasonable opportunity to intervene or otherwise perfect their rights of recovery.

(k) The commonwealth shall be subrogated to a claimant's entire cause of action or right to proceed against any third party and to a claimant's claim for monies to the extent of assistance or services provided under chapters 118, 118E, or 118G. The commonwealth shall also have a separate and independent cause of action to recover, from any third party, assistance provided to a claimant under those chapters, which cause of action shall be in addition to other causes of action. The commonwealth may, by attorneys employed or selected by it, commence a civil action or other proceeding to establish the liability of any third party or to collect such moneys, or may intervene as of right in any civil action commenced by a claimant against a third party. No third party shall require written authorization from the claimant before honoring the commonwealth's rights under this section.

(l) Failure of a claimant without good cause to provide notice as required under this section or to provide such further information deemed necessary by the executive office to pursue its rights under this section shall be grounds for termination of benefits.

(m) Notwithstanding any general or special law or rule or regulation to the contrary, all third parties shall provide information requested by the executive office, the department of transitional assistance, and the division of health

care finance and policy for use by those agencies for the purpose of recovering payments for public assistance benefits or services under this section, section 5G of chapter 18, and section 39 of chapter 118G.

Summary:

This section facilitates recovery of accident payments to beneficiaries, by the Department of Transitional Assistance, MassHealth, and the Health Safety Net Office.

Apprentice ID Fees

SECTION 8. Section 11W of chapter 23 of the General Laws, as amended by section 12 of chapter 27 of the acts of 2009, is hereby further amended by inserting after the first paragraph the following 2 paragraphs:-

All apprentice identification cards, regardless of their expiration date, for occupations that would require the payment of the prevailing wage pursuant to sections 26 and 27 of chapter 149 on a public works project, shall expire on the anniversary date of their effective date, and each apprentice desiring to continue in an apprentice program thereafter may do so only after submitting a new application with the appropriate fee to the division for an updated annual apprentice identification card.

No apprentice identification card fee shall be charged to any veteran receiving GI Bill benefits through registered apprenticeship programs.

Summary:

This section clarifies that annual fees are owed for all apprentice occupations subject to the prevailing wage. It also eliminates fees for veterans receiving GI Bill benefits.

Number of DIA Judges

SECTION 9. (A) Section 4 of chapter 23E of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out, in line 3, the word "twenty-one" and inserting in place thereof the following words:- not more than 21.

(B) Section 5 of said chapter 23E, as so appearing, is hereby amended by striking out, in line 4, the word "six" and inserting in place thereof the following words:- not more than 6.

Summary:

This section allows the Governor to appoint fewer than the statutory number of industrial accident administrative judges and reviewing board members.

Commonwealth Energy Solutions Division

SECTION 10. (A) Section 1 of chapter 23J of the General Laws, as amended by sections 2 and 3 of chapter 158 of the acts of 2009, is hereby further amended by inserting after the definition of "Clean energy research" the following definition:-

"Commonwealth energy solutions division", the division established by section 12.

(B) Said section 1 of said chapter 23J, as so amended, is hereby further amended by inserting after the definition of "Director" the following 2 definitions:-

"Division director", the director appointed to head the commonwealth energy solutions division under section 12.

"Energy resources", electricity, natural gas, heating fuels, transportation fuels, demand response, efficiency, and energy management services as defined in section 3 of chapter 25A.

(C) Said section 1 of said chapter 23J, as so amended, is hereby further amended by inserting after the definition of "Fund" the following definition:-

"Local government body", a city, town, district, municipal aggregation as set forth in section 134 of chapter 164, regional school district or county, or an agency or authority thereof, including a housing authority, board, commission, department or instrumentality of a city, town district, regional school district or county.

(D) Said section 1 of said chapter 23J, as so amended, is hereby further amended by inserting after the definition of "Revenue" the following 2 definitions:-

"State energy resource contracts", contracts executed under section 12 by the division.

"State entities", state agencies, state authorities, and state higher education institutions.

(E) Said chapter 23J is hereby further amended by adding the following section:-

Section 12. (a) There shall be within the center a division to be known as the commonwealth energy solutions division. The division shall be headed by a division director who shall be appointed by the board and who shall be a person of skill and experience in the field of energy procurement. The division director shall serve at the pleasure of the board, and the board shall fix the division director's compensation and terms of employment. The division director shall devote full time during business hours to the duties of the office. The division director may, subject to the general supervision of the board, employ other employees, consultants, agents, and advisors, and shall attend meetings of the board.

(b) The division shall promote and advance the commonwealth's public interests by acting as the commonwealth's lead agency, in collaboration with the clean energy center, the executive office of energy and environmental affairs, the executive office of administration and finance, the operational services division, and the department of energy resources, to reduce energy costs and greenhouse gas emissions for all state entities by: (i) establishment of a state-wide procurement process for energy resources, consistent with the regulations of the operational services division; (ii) management of a state-wide energy monitoring and analysis system to optimize energy usage in state-owned facilities; and (iii) recommending energy-related capital investments. The division shall manage these duties so as to obtain adequate, reliable, efficient, environmentally sustainable, and cost-effective energy resources.

(c) There shall be an advisory committee consisting of 9 individuals with an interest in and knowledge of matters related to energy procurement. The board shall consult with the advisory committee in matters related to the division and in the implementation of this section. The advisory committee shall develop objectives and procurement strategies and recommend financial controls. The advisory committee shall include: the secretary of the executive office of administration and finance, who shall serve as chair; the secretary of the executive office of energy and environmental affairs; the commissioner of the department of energy resources; the commissioner of the operational services division; a member appointed by the secretary of administration and finance from a participating executive branch agency; 1 member appointed by the secretary of administration and finance representing participating state authorities; 1 member appointed by the secretary of administration and finance who is an expert on energy procurement ;1 representative appointed by the Massachusetts Municipal Association; and 1 member appointed by the secretary of energy and environmental affairs who is an expert on energy procurement. The members of the advisory committee shall serve without compensation, but each member shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties. The advisory committee may meet as often as the members shall decide, but it shall meet at least quarterly. A member of the advisory committee may appoint a designee to represent that member at any such meeting.

(d) All state entities shall procure energy resources from state energy resource contracts negotiated by the division and executed subject to this section unless granted a waiver by the division. Local governmental bodies shall have the option to procure energy resources from these state energy resource contracts by notifying the division in writing.

(e) The division, in consultation with the board and the advisory committee, shall establish procedures and criteria to enable each state entity, in consultation with the division, to evaluate the costs and benefits of any then current

contractual obligations for energy resources applicable to that state entity. Following the termination date of these contracts, the state entity shall utilize the state energy resource contracts executed under this section unless granted a waiver by the division director. The director shall consult with the board or other applicable governing body of the state entity, and subject to criteria established under this subsection, may grant a waiver if the costs and benefits of maintaining separate procurements for the state entity provides the best value or is in the best interests of the entity. If a waiver is granted, the state entity may conduct separate procurements for these energy resources subject to all applicable procurement laws, regulations and policies of the commonwealth. Any entity procuring energy resources through a state energy resource contract shall execute all necessary contract documents to complete the procurement for the state entity.

(f) To increase efficiencies in conducting energy resource procurements for state entities and local governmental bodies, the division shall: (i) establish state-wide procurement for energy resources for such entities; (ii) register as a load-serving entity with ISO-NE to participate in wholesale electricity market; (iii) consolidate all eligible state accounts, and if it elects, accounts from participating local governmental bodies, into a single electricity and natural gas load profile, and (iv) enable small accounts, as determined by the division, to participate in wholesale market purchases.

(g) To streamline energy billing for state entities which have executed contracts under this section, the division, in consultation with the department of energy resources, the executive office for administration and finance and participating state entities, shall: (i) create a centralized billing system to receive all utility bills, audit for errors, and provide billing to individual state agencies and accounts and (ii) provide the division and the department of energy resources with such billing information, as they may request.

(h) To improve energy usage and management for state entities and achieve state energy policy objectives, the division shall: (i) utilize an energy management system to monitor and analyze consumption in facilities of state entities under state energy resource contracts; (ii) utilize data from such an energy management system, energy audits and other sources to identify energy efficiency investment opportunities; (iii) identify all existing state-owned energy generation assets and develop a plan to optimize their value; and (iv) establish equitable means to distribute energy savings to state entities. The division may develop a similar energy usage and management program for participating local governmental bodies and may utilize the systems and methods set forth in this paragraph in consultation with the green communities division of the department of energy resources.

(i) To identify appropriate capital investments in the state facility energy infrastructure, the division, in consultation with the executive office for administration and finance, shall develop recommendations that: (i) establish economic criteria to be applied in making capital investments in identified energy efficiency opportunities; (ii) identify capital resources, either through existing bonding authority or other sureties or resources to fund energy efficiency improvements and distributed energy generation; and (iii) utilize energy cost savings to finance, in whole or in part, such capital improvements.

(j) The division shall adopt regulations and procedures to carry out this section.

(k) The center shall report annually on January 1 to the center's board, the clerks of the senate and house of representatives, the governor, and the participating state entities on the operations of the division. The annual report shall include, but not be limited to, a description of the performance of the procurement program and contracts executed pursuant to this section.

(F) The commonwealth energy solutions division shall adopt its initial regulations and procedures under subsection (j) of section 12 of chapter 23J of the General Laws, not later than September 1, 2010. The division shall file its first annual report under subsection (k) of said section 12 not later than January 1, 2012.

Summary:

This section establishes a Commonwealth Energy Solutions Division within the Massachusetts Clean Energy Center, as the Commonwealth's lead agency to reduce energy costs and greenhouse gas emissions for all state entities, including establishing a state procurement process for energy resources.

Repeal Sales Tax Exemptions for Candy and Soft Drinks

SECTION 11. (A) Chapter 29 of the General Laws is hereby amended by inserting after section 2AAA the following section:-

Section 2BBB. There shall be established and set up on the books of the commonwealth a separate fund to be known as the Commonwealth Health and Prevention Fund. The fund shall be credited with all sales tax revenues collected from the sale of candy, soft drinks and alcoholic beverages under chapter 64H. Amounts credited to the fund shall be expended, subject to appropriation, to support alcohol and tobacco addiction services, health promotion, school-based health programs, teenage pregnancy prevention, domestic violence and sexual assault prevention, work force expansion services and other critical programs that support the wellness of residents of the commonwealth.

(B) Section 1 of chapter 64H of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding the following definitions:

"Candy", a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops, or pieces. "Candy" shall not include any preparation containing flour and shall require no refrigeration.

"Soft drinks", non-alcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" do not include beverages that contain milk or milk products, soy, rice or similar milk substitutes, or vegetable or fruit juice.

(C) Section 6 of said chapter 64H, as so appearing, is hereby amended by striking out, in line 77, the words ", soft drinks".

(D) Said section 6 of said chapter 64H, as so appearing, is hereby further amended by striking out, in line 78, the words ", candy and confectionary".

(E) Said section 6 of said chapter 64H, as so appearing, is hereby further amended by inserting, after the word "include", in line 80, the following words:- soft drinks and candy, as defined in section 1,.

(F) Said section 6 of said chapter 64H, as so appearing, is hereby further amended by striking out, in lines 115 to 116, the words "in the instance in which it sells only snacks and candy with a sales price of less than \$3.50" and inserting in place thereof the following words:- to the extent that it sells food products with a sales price of less than \$3.50; provided further that candy and soft drinks as defined in section 1 are subject to tax regardless of whether the vending machine from which they are sold is considered an eating establishment or not.

(G) Said section 6 of said chapter 64H, as so appearing, is hereby further amended by inserting after the word "Beverages", in line 127, the following words:- , except soft drinks,.

Summary:

This section repeals the sales tax exemptions for candy and soft drinks. Resulting revenues, and those from alcohol sales, will be deposited in a new Health and Prevention Fund, to be expended, subject to appropriation, to support alcohol and tobacco addiction services, health promotion, school-based health programs, teenage pregnancy prevention, domestic violence and sexual assault prevention, work force expansion services and other critical programs that support the wellness of residents of the commonwealth.

Payments to MBTA and RTAs

SECTION 12. Section 2ZZZ of chapter 29 of the General Laws, as appearing in section 1 of chapter 35 of the acts of 2009, is hereby amended by striking out subsection (d) and inserting in place thereof the following subsection: -

(d) The following amounts shall be transferred annually from the fund to the Massachusetts Transportation Trust Fund, from which the Massachusetts Department of Transportation shall pay not less than: (1) \$160,000,000 to

the Massachusetts Bay Transportation Authority or any fund controlled by the authority in each fiscal year; and (2) \$15,000,000 to regional transit authorities organized under chapter 161B or predecessor statutes in each fiscal year

Summary:

This section makes a technical correction to the transportation reform funding mechanism, allowing MassDOT to make annual payments to the MBTA and regional transit authorities.

Capital Gains Revenue Transfer

SECTION 13. (A) Section 5B of chapter 29 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after the word "laws", in line 10, the following words:- , the transfers of capital gains income tax revenue required by section 5G.

(B) Said section 5B of chapter 29, as so appearing, is hereby further amended by inserting after the word "therein", in line 68, the following words:- , and shall be net of the transfers of capital gains income tax revenue required by section 5G.

Said chapter 29 is hereby further amended by inserting after section 5F the following section:

Section 5G. The department of revenue shall report by November 30 to the state comptroller, the executive office for administration and finance and the house and senate committees on ways and means tax revenues estimated to have been collected during the preceding fiscal year from capital gains income. After each quarter, the department of revenue shall certify to the state comptroller the amount of tax revenues estimated to have been collected during the preceding quarter from capital gains income. If the department of revenue certifies that the amount of tax revenues estimated to have been collected from capital gains income exceeds \$1,000,000,000 in any fiscal year, the comptroller shall transfer quarterly any such amount that exceeds \$1,000,000,000 collected during that fiscal year to the Commonwealth Stabilization Fund established by section 2H. This transfer shall be made before the certification of the consolidated net surplus for the previous fiscal year as provided in section 5C. Five per cent of any amount transferred to the Commonwealth Stabilization Fund under this section shall then be transferred from the Commonwealth Stabilization Fund to the State Retiree Benefits Trust Fund.

Summary:

This section requires that, when capital gains income tax revenue exceeds \$1 billion in any fiscal year, the excess will be transferred to the Commonwealth Stabilization Fund. But 5 percent of that excess amount will be transferred instead to the State Retiree Benefits Trust Fund.

No Lobbyists for State Entities

SECTION 14. Chapter 29 of the General Laws is hereby amended by inserting after section 30 the following section:-

Section 30A. Except for its full-time employee, a state agency or state authority shall not use its funds to pay for an executive or legislative agent, as defined in section 39 of chapter 3, notwithstanding section 50 of chapter 3.

Summary:

This section prohibits state agencies and authorities from paying lobbyists with their funds.

DOR Administrative Provisions to Facilitate Collections

SECTION 15. (A) Section 17 of chapter 62 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out paragraph (d) and inserting in place thereof the following paragraph:-

(d) A partner's distributive share of any item of income, loss, deduction or credit shall be determined by the partnership agreement, but that distributive share shall instead be determined in accordance with the partner's interest in the partnership, determined by taking into account all facts and circumstances, if (1) the allocation to a partner under the agreement of income, gain, loss, deduction, or credit, or any item thereof, does not have substantial economic effect, or (2) the partnership agreement does not provide as to the partner's distributive share of income, gain, loss, deduction, or credit, or item thereof. The partner shall include the distributive share of income, loss, deduction or credit in the partner's return for the taxable year during which or with which the taxable year of the partnership ends. Except as the context requires, and subject to rules or regulations that the commissioner may adopt, the determination of a partner's distributive share shall take into account rules and principles developed under the Code and federal regulations promulgated under it, adjusted as required or appropriate to properly reflect income and other tax items for Massachusetts tax purposes.

(B) Chapter 62C of the General Laws is hereby amended by inserting after section 24 the following section:-

Section 24A. (a) Tax treatment of pass-through entity items is established at the entity level. The commissioner may audit, in a unified proceeding, a pass-through entity whose members or indirect owners are subject to tax under chapters 62 or 63. Pass-through items of entities subject to unified audit procedures must be treated consistently by the pass-through entity and all members or indirect owners of the pass-through entity, except to the extent that a taxpayer member or indirect owner makes a declaration of inconsistency with its original return. For purposes of this chapter, the entity is a taxpayer.

(b) The statute of limitations for assessing tax with respect to a pass-through entity item for an entity's taxable year shall not expire before the latest of (1) 3 years after the later of the date on which the entity's return for the taxable year was filed, or the last day for filing the entity's return for that year, without extensions, or (2) an assessment period established in section 26 applicable to a taxpayer member or indirect owner. Subsections (d) and (h) of section 26 shall apply to returns filed by a pass-through entity. A member or indirect owner of a pass-through entity may file a request for an adjustment of tax attributable to any pass-through entity item for a taxable year within 3 years after the later of the date on which the entity's return for the taxable year was filed, or the last day for filing the entity's return for that year, without extensions; but such a request may not be filed after the commissioner has issued a final entity administrative adjustment. Partial or full denial of a request for adjustment of tax shall be treated as a refusal to abate or refund tax under section 39

(c) Assessment of a deficiency attributable to any pass-through entity item against members or indirect owners of entities subject to unified audit proceedings is made only after entity-level proceedings are complete. Matters determined in a unified audit proceeding are not subject to dispute by the individual members or indirect owners. The commissioner shall establish by regulation the types of pass-through entities subject to unified audit proceedings (which may include, without limitation, partnerships and S corporations), and the requirements imposed on these entities, including the designation of a tax matters partner. So far as practicable, these requirements shall be based on federal rules.

(C) Section 30 of said chapter 62C, as appearing in the 2008 Official Edition, is hereby amended by striking out the fourth paragraph and inserting in place thereof the following paragraph:-

Any person or estate failing to comply with the first paragraph shall be assessed a penalty of 10 per cent of the additional tax found due, this penalty to become part of the additional tax found due. For reasonable cause shown, the commissioner may, in the commissioner's discretion, abate this penalty in whole or in part.

(D) Section 30A of said chapter 62C, as so appearing, is hereby amended by striking out subsection (c), and inserting in place thereof the following subsection:-

(c) Any person failing to comply with subsection (a) shall be assessed a penalty of 10 per cent of the additional tax found due, this penalty to become part of the additional tax found due. For reasonable cause shown, the commissioner may, in the commissioner's discretion, abate this penalty in whole or in part.

(E) Section 31A of said chapter 62C is hereby amended by inserting after the word "62B", in line 4, as so appearing, the following words:- , section 7D of chapter 64C.

(F) Section 32 of said chapter 62C, as so appearing, is hereby amended by striking out, in line 62, the word "ninetieth" and inserting in place thereof the following word:- sixtieth.

(G) The first paragraph of paragraph (3) of subsection (e) of said section 32 of said chapter 62C, as so appearing, is hereby further amended by adding the following sentence:- For purposes of this paragraph, the date of a decision by the appellate tax board shall be determined without reference to any later issuance of finding of facts and report by the board or to any request for a finding of facts and report.

(H) Said chapter 62C of the General Laws is amended by inserting after said section 32 the following section:-

Section 32A. (a) If an obligation from an installment transaction to which subsections (a) to (c), inclusive, of section 453A of the Code applies is outstanding as of the close of any taxable year, the tax imposed by chapter 62 or 63 for that taxable year shall be increased by the amount of interest equal to the product of the applicable percentage of the deferred tax liability determined under section 453A(c) of the Code, adjusted for Massachusetts differences, including use of the applicable tax rate under chapter 62 or 63, as the case may be, multiplied by the underpayment rate in effect under subsection (a) of section 32 of this chapter.

(b) In the case of any installment obligation to which section 453(l)(2)(B) of the Code applies, the tax imposed by chapter 62 or 63 for any tax year in which payment on that obligation is received shall be increased by an amount of interest determined as follows: the amount of tax for that taxable year attributable to the payments on installment obligations to which this subsection applies shall be multiplied by the underpayment rate determined under subsection (a) of section 32 of this chapter in effect at the time of sale, which rate shall be applied for the period beginning on the date of sale and ending on the date that payment is received.

(c) The commissioner may issue rules or regulations analogous to those under sections 453A and 453 adjusted to reflect Massachusetts differences or otherwise to take account of the tax laws of the commonwealth.

(I) Chapter 64C of the General Laws is hereby amended by inserting after section 7C the following section:-

Section 7D. Every person who fails to pay to the commissioner any sum required by this chapter to be paid shall be personally and individually liable therefor to the commonwealth. The term "person," as used in this section, includes an officer or employee of a corporation, or a member or employee of a partnership or limited liability company, who as such officer, employee or member is under a duty to pay over the taxes imposed by this chapter.

(J) Subsection (H) shall be effective for tax years beginning on or after January 1, 2010, with respect to installment obligations outstanding as of the close of the tax year.

Summary:

This section amends DOR administrative provisions to facilitate tax collections by:

" giving DOR the authority, based on the federal Tax Equity and Fiscal Responsibility Act of 1982, to audit partnership return items at the level of the partnership rather than at the level of the partner, and clarifying how a partner's distributive share of income and other tax items are determined if the partnership agreement does not have substantial economic effect or does not provide for the determination of distributive share.

" changing the penalty for failure to report a federal tax change or other state change from the lesser of \$100 or 10% of the tax due to 10% of the tax due. The \$100 penalty is insignificant in situations where the unreported federal change is substantial.

" assisting DOR in collection of unpaid tobacco taxes by expanding the responsible persons provisions.

" providing an interest charge, consistent with federal law, on certain taxpayers who defer payment of income tax through use of the installment sale method.

" shortening, from 90 to 60 days, the period to appeal a state tax assessment, to conform with similar legal deadlines.

" requiring taxpayers to pay taxes promptly, once they lose an appeal to the Appellate Tax Board.

Tax Credit Transparency

SECTION 16. (A) Section 1 of chapter 62C of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting before the definition of "Building contractor" the following definition:-

"Administering agency head", the agency head responsible for administering the applicable state tax credit program. For the brownfields tax credit and the film tax credit the administering agency head is the department of revenue. For the medical device tax credit, the administering agency head is the Massachusetts life sciences center.

(B) Said section 1 of chapter 62C, as so appearing, is hereby further amended by striking out the definition of "Code".

(C) Said section 1 of chapter 62C, as so appearing, is hereby further amended by inserting after the definition of "Promoter" the following definition:-

"Secretary", the secretary of administration and finance.

(D) Said section 1 of chapter 62C, as so appearing, is hereby further amended by inserting after the definition of "Show" the following definition:-

"Tax credit program", 1 of the following credits against the state income tax to stimulate economic development and other policy goals: the brownfields tax credit in section 38Q of chapter 63 and subsection (j) of section 6 of chapter 62; the dairy farmer tax credit in section 38Z of chapter 63 and subsection (o) of section 6 of chapter 62; the FDA user fees credit in section 31M of chapter 63 and subsection (n) of section 6 of chapter 62; the film tax credit in subsection (b) of section 38X of chapter 63 and subsection (l) of section 6 of chapter 62; the historic rehabilitation tax credit in section 38R of chapter 63 and section 6J of chapter 62; the life sciences investment tax credit in section 38U of chapter 63 and subsection (m) of section 6 of chapter 62; the low-income housing tax credit in section 31H of chapter 63 and section 6I of chapter 62; the medical device tax credit in section 31L of chapter 63 and section 6 1/2 of chapter 62; and the refundable research credit in subsection (j) of section 38M of chapter 63.

(E) Said chapter 62C is hereby further amended by adding the following section:-

Section 88. (a)(1) On or before May 15 each year, the administering agency head of each tax credit program shall submit a report to the commissioner on each tax credit program authorized for the previous calendar year, in this section called the report, which shall be a public record.

(2) The report shall contain the following information:

- (i) the identity of each taxpayer authorized by the administering agency head to receive a tax credit;
- (ii) the amount of tax credit award and issued tax credit for each taxpayer and each project, if applicable;
- (iii) the date of the tax credit award or issued tax credit for each taxpayer and each project; and
- (iv) additional data and criteria that the secretary determines to be relevant to analyzing the effectiveness of that tax credit program.

(b)(1) On or before February 15 of every year, each taxpayer receiving an authorized tax credit from the administering agency head in the previous calendar year shall submit data and analysis reasonably determined by the Secretary to be relevant to analyzing the effectiveness of the tax credit program.

(2) On or before May 15 of each year, or by another date that the secretary determines to be practicable, the administering agency head shall submit to the commissioner, in a form prescribed by the commissioner, copies of any data and analysis required by paragraph (1), with the report required by subsection (a). The commissioner shall provide this information on a government internet website for public disclosure.

Summary:

This section requires public disclosure of the results of refundable or transferable tax credit programs, including the number of jobs created, by taxpayers who receive the credits and by state agencies that administer the programs.

Extend Cigarette Excise Rate to Cigars and Tobacco

SECTION 17. (A) Section 7B of chapter 64C of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding the following subsection:-

(m) In addition to the excise imposed by subsection (b), an excise shall be imposed on all cigars weighing more than 3 pounds per 1,000 units held in the commonwealth at the rate of 80 per cent of the wholesale price of that product. In addition to the excise imposed by subsection (b), an excise shall be imposed on all smoking tobacco held in the commonwealth at the rate of 90 per cent of the wholesale price of that product.

(B) Section 7C of said chapter 64C is hereby amended by striking out in line 17, the word "twenty-five" and inserting in place thereof the following figure:- 45.

(C) Subsection (A) shall apply to sales of cigars and smoking tobacco occurring on or after the first day of the calendar quarter that begins at least 30 days after passage.

(D) Subsection (B) shall apply to sales of smokeless tobacco occurring on or after the first day of the calendar month that begins at least 30 days after passage.

(E) Notwithstanding section 28 of chapter 64C of the General Laws, the department of revenue shall reasonably determine on a quarterly basis the increase, if any, in the excise amounts collected under sections 7B and 7C of said chapter 64C, that are attributable to the enactment of subsections (A) and (B), respectively. The commissioner shall annually credit any such increased excise amounts to the Commonwealth Care Trust Fund, established in section 2000 of chapter 29 of the General Laws.

Summary:

This section extends the 2008 cigarette excise rate to cigars and smoking and smokeless tobacco. The proceeds will be deposited in the Commonwealth Care Trust Fund to support the state's health reform initiatives.

Repeal Sales Tax Exemption for Aircraft

SECTION 18. (A) The definition of "Tangible personal property" in section 1 of chapter 64H of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding the following sentence:- A transfer of an interest in an aircraft may be considered a transfer of tangible personal property under rules determined by the commissioner.

(B) Section 6 of said chapter 64H, as so appearing, is hereby amended by striking out paragraph (v v).

(C) Section 7 of chapter 64I of the General Laws, as so appearing, is hereby amended by striking out paragraph (e).

(D) This section shall take effect on August 1, 2010.

Summary:

This section repeals the sales and use tax exemptions for aircraft. It leaves in effect the exemption for aircraft parts.

Abolish Regional Reference Center Libraries

SECTION 19. Section 19C of chapter 78 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out clause (2).

Summary:

This section eliminates the requirement that the Board of Library Commissioners designate and fund regional reference center libraries, saving about \$650,000.

Expand Bottle Bill

SECTION 20. Section 321 of chapter 94 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out the definitions of "Beverage" and "Beverage container" and inserting in place thereof the following 2 definitions:--

"Beverage", soda water or similar carbonated soft drinks; beer and other malt beverages; non-carbonated soft drinks including but not limited to mineral water, flavored and unflavored water, spring water, fruit drinks, juice, sports drinks and other water beverages, coffee and coffee-based drinks; and all other non-alcoholic carbonated and noncarbonated drinks in liquid form intended for human consumption except milk and beverages that are primarily derived from dairy products, infant formula, and FDA-approved medicines; but shall not include alcoholic beverages other than beer and malt beverages as defined in chapter 138 or wine.

"Beverage container", any sealable bottle, can, jar or carton which is primarily composed of glass, metal, plastic or any combination of those materials and is produced for the purpose of containing a beverage, including containers of 2 gallons capacity or less for carbonated and malt beverages and less than 1 gallon for noncarbonated beverages. This definition shall not include containers made of biodegradable material.

Summary:

This section expands the state's bottle deposit law to include containers for non-carbonated drinks like water, juices, coffee-based drinks and sport drinks.

MassHealth - Recovery of Pharmacy Clawback Payments

SECTION 21. (A) Subsection (b) of section 31 of chapter 118E of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out the last paragraph and inserting in place thereof the following paragraph:-

Any recovery under subsections (a), (b), or (b 1/2) may be made only after the death of the surviving spouse, if any, and only at a time when that spouse has no surviving child who is under age twenty-one or is blind or permanently and totally disabled. The division shall waive recovery if such recovery would work an undue hardship, as defined by the division in its regulations. If insufficient estate assets are available to repay the full amount due, any amounts recovered shall first be applied to the amount due under subsection (b 1/2).

(B) Said section 31 of said chapter 118E, as so appearing, is hereby amended by inserting after said subsection (b) the following subsection:-

(b 1/2) This subsection shall apply to estates of individuals dying on or after July 1, 2010. An estate of an individual who was a "full benefit dual eligible", as defined under 42 U.S.C. section 1396u-5, shall be responsible for repaying the state Medicaid program contributions the state made on or after July 1, 2010, to the secretary of the federal Department of Health and Human Services for the federal assumption of prescription costs for such dual eligible under 42 U.S.C. section 1396u-5(c).

(C) The first paragraph of subsection (d) of said section 31 of said chapter 118E, as so appearing, is hereby amended by striking out the second sentence and inserting in place thereof the following 2 sentences:- If the

individual at any time or after July 1, 2010, was a "full benefit dual eligible", as defined under 42 U.S.C. section 1396u-5, the amount due shall also include contributions the state Medicaid program made on or after July 1, 2010, to the secretary of the federal Department of Health and Human Services for the federal assumption of prescription costs for such dual eligible under 42 U.S.C. section 1396u-5(c). If insufficient assets exist from the proceeds from the sale to repay both the amount of assistance provided and payments for the federal assumption of prescription costs, any amounts recovered shall first be applied to payments for the federal assumption of prescription costs.

Summary:

This section authorizes MassHealth to recover pharmacy payments from estates, in addition to its current authority to recover MassHealth payments.

Health Safety Net Services

SECTION 22. (A) Section 1 of chapter 118G of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out the definition of "Critical access services".

(B) Said section 1 of said chapter 118G, as so appearing, is hereby further amended by striking out, in line 97, the words "emergency, urgent, and critical access".

(C) Section 34 of said chapter 118G, as so appearing, is hereby amended by striking out the definition of "Critical access services".

(D) Said section 34 of said chapter 118G, as so appearing, is hereby further amended by striking out, in lines 107 and 108, the words "emergency, urgent and critical access".

Summary:

This section removes the "critical access" requirement for reimbursable acute hospital Health Safety Net (HSN) services, thus allowing all hospitals to bill the HSN for scheduled primary care visits. It promotes access to primary care for HSN patients. It will not increase state costs because the law caps HSN expenses.

Assessments on Managed Care Organizations

SECTION 23. (A) Section 34 of chapter 118G of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after the definition of "Health services" the following definition:- "Managed Care Organization", any managed care organization as defined by 42 CFR 438.2 and any eligible health insurance plan as defined by section 1 of chapter 118H, that contracts with MassHealth or the commonwealth health connector authority; but the term shall not include any senior care organization as defined by section 9D of chapter 118E.

(B) The definition of "Payments subject to surcharge" in said section 34 of said chapter 118G, as so appearing, is hereby amended by adding the following sentence:- But the term shall include payments made by a managed care organization on behalf of (a) Medicaid recipients under age 65, and (b) enrollees in the commonwealth care health insurance program.

(C) The definition of "Surcharge payor" in said section 34 of said chapter 118G, as so appearing, is hereby amended by adding the following sentence:- But the term shall include managed care organizations.

(D) Subsection (a) of section 36 of said chapter 118G, as so appearing, is hereby amended by striking out the third sentence and inserting in place thereof the following sentence:- The purposes of the fund shall be: (i) to maintain a health care safety net by reimbursing hospitals and community health centers for a portion of the cost of reimbursable health services provided to low-income, uninsured or underinsured residents of the commonwealth; and (ii) to support a portion of the costs of the Medicaid program under chapter 118E and the commonwealth care health insurance program under chapter 118H.

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(E) Said section 36 of said chapter 118G, as so appearing, is hereby further amended by inserting after the word "hospitals", in line 29, the following words:- ; and provided further, that any amounts collected from surcharge payors in any year in excess of \$160,000,000, adjusted to reflect applicable surcharge credits, shall be transferred to the General Fund to support a portion of the costs of the Medicaid and commonwealth care health insurance programs.

(F) Section 38 of said chapter 118G, as so appearing, is hereby amended by striking out the third and fourth sentences and inserting in place thereof the following 2 sentences:- The office shall calculate the surcharge percentage by dividing \$160,000,000 by the projected annual aggregate payments subject to the surcharge, excluding projected annual aggregate payments based on payments made by managed care organizations. The office shall determine the surcharge percentage before the start of each fund fiscal year and may redetermine the surcharge percentage before April 1 of each fund fiscal year if the office projects that the initial surcharge percentage established the previous October will produce less than \$150,000,000 or more than \$170,000,000 in surcharge payments excluding payments made by managed care organizations.

Summary:

This section includes managed care organizations among the health care providers whose payments are subject to a state surcharge, and uses the proceeds to help support the Medicaid and Commonwealth Care programs.

CSE Spending from Penalties and Interest Account.

SECTION 24. Section 11 of chapter 119A of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after the word "fund", in line 7, the following words:- and from the child support penalties account.

Summary:

This section authorizes DOR's Child Support Enforcement Division to spend from the penalties and interest account on federally reimbursable child support enforcement activities.

Renegotiate or Terminate Leases or Temporarily Close Courthouses

SECTION 25. (A) Section 23 of chapter 5 of the acts of 2009 is hereby amended by striking out the figure "2010" and inserting in place thereof the following figure:- 2011.

(B) Notwithstanding section 40G of chapter 7 of the General Laws or any other general or special law or regulation to the contrary, the commissioner of capital asset management and maintenance may on behalf of any state agency or the administrative office of the trial court renegotiate any existing facilities lease of that agency or office, which was procured pursuant to said chapter 7, to obtain a reduced lease rate or other valuable consideration in consideration of an extension of any such lease for a period of time beyond the 10-year limitation provided in said section 40G of chapter 7; but no lease shall be extended to a date that is more than 15 years after the original commencement date of the lease. The commissioner shall first make a written determination that the renegotiated lease provisions of each renegotiated lease are favorable to the commonwealth based on a cost-benefits analysis. The authority granted by this subsection shall expire on June 30, 2011.

(C) Notwithstanding any general or special law to the contrary, if the chief justice for administration and management determines that sufficient funds to maintain all existing courthouses have not been appropriated, he may, with the agreement of the commissioner of capital asset management and maintenance, temporarily close courthouses and re-assign personnel employed at that courthouse, including a clerk or clerk-magistrate, to other courthouses. Any permanent amendment to the jurisdiction of a court shall require the amendment of the applicable General Laws.

Summary:

This section extends through fiscal year 2011 the present legislative authorization for DCAM to terminate state agency and court facility leases for insufficient funding. It also authorizes DCAM to realize operating budget cost

savings by renegotiating lease terms in return for extending lease terms to as much as a total of 15 years, and if appropriations are insufficient, it authorizes the Trial Court to temporarily close courthouses and to re-assign personnel employed there.

Capital to Operating Transfer

SECTION 26. (a) Whenever the commonwealth has borrowed funds as authorized by law to fund the acquisition of equipment that would have otherwise been funded under an item of appropriation in section 2, the secretary of administration and finance may authorize the transfer of funds from the item of appropriation in section 2 from which the equipment acquisition would have been funded to any other item of appropriation for the purpose of funding personnel or other operating-related expenses that would have otherwise been funded in the fiscal year 2011 capital budget from the proceeds of bonds. The secretary may establish an appropriation account to receive this transfer if none exists under section 2. Any amount transferred under this section shall not exceed the cost of the related equipment acquisition, and the aggregate amount of all such transfers shall not exceed \$50,000,000.

(b) Before making any transfer authorized by this section, the secretary of administration and finance shall submit a transfer report and certification to the house and senate committees on ways and means. The report and certification shall include the following: (1) a schedule showing the cost of equipment acquisition that would have been funded from an item of appropriation in section 2, the item of appropriation from which the equipment would have been funded and the bond authorization against which bonds may be issued to fund the acquisition of the equipment; (2) a schedule showing the cost of all personnel and other operating expenses that would have been funded from the fiscal year 2011 capital budget, identification of each of the agencies that pay the related expenses, the item in the capital budget and the bond authorization from which the personnel or operating expenses would have been funded, and the item of appropriation in section 2 from which the personnel or operating expenses will be funded; (3) a schedule of each amount that will be transferred from 1 item of appropriation in section 2 to another under subsection (a) in order to effectuate the transactions described in clauses (1) and (2); and (4) a certification of the secretary confirming that the equipment will be acquired in fiscal year 2011 with bond proceeds pursuant to the fiscal year 2011 capital budget and the bond authorization identified in clause (1).

Summary:

This section establishes a no-cost mechanism for taking personnel and other operating cost expenses off the capital budget, by allowing transfers between budget accounts.

Commonwealth Care Bridge Program Reauthorization

SECTION 27. (a) Except as provided in subsection (b), notwithstanding any general or special law to the contrary, an eligible individual pursuant to section 3 of chapter 118H of the General Laws shall not include persons who cannot receive federally-funded benefits under sections 401, 402 and 403 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, as amended, for fiscal year 2011.

(b) Notwithstanding any general or special law to the contrary, the secretary of administration and finance, the secretary of health and human services and the executive director of the commonwealth health insurance connector authority, in their full discretion and subject only to the terms and conditions in this subsection, may establish or designate a health insurance plan in which a person who cannot receive federally-funded benefits under said sections 401, 402 and 403 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, as amended, and who is also an eligible individual pursuant to section 3 of chapter 118H of the General Laws, may enroll for a period not to exceed July 1, 2010 to June 30, 2011, inclusive. This plan may be contracted for selectively from the health plans that contracted in fiscal year 2010 to provide insurance coverage to commonwealth care or MassHealth enrollees. Total state costs of providing coverage to all such persons, net of enrollee contributions and any federal financial participation, shall not exceed \$75,000,000 for fiscal year 2011. To the extent that additional federal financial participation becomes available for paying the costs of such coverage, the secretary of administration and finance may direct the comptroller to make such

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amounts available from the General Fund for the purpose of paying the costs of such coverage. If the secretary of administration and finance, the secretary of health and human services and the executive director of the commonwealth health insurance connector authority determine that the projected costs of enrolling eligible individuals in such coverage in fiscal year 2011 will exceed net state costs of \$75,000,000, they may limit enrollment in such coverage. If the secretary of administration and finance, the secretary of health and human services and the executive director of the commonwealth health insurance connector authority are unable to establish or designate a health insurance plan under this section, the secretary of administration and finance may direct the comptroller to transfer up to \$75,000,000 from the Commonwealth Care Trust Fund to the Health Safety Net Trust Fund for the cost of health safety net claims of these individuals.

Summary:

This section reauthorizes for fiscal year 2011 the Commonwealth Care Bridge program, which provides health care benefits for certain legal immigrants.

Expanded Allotment and 9C Authority

SECTION 28. During fiscal year 2011, the power of the governor or the secretary of administration and finance to allot funds under section 9B of chapter 29 of the General Laws shall extend to any monies appropriated by the general court. The procedures in section 9C of said chapter 29 shall apply to allotments under this section.

Summary:

This section expands the Governor's power to allot funds and make 9C reductions to include all appropriated funds.

Line-Item Transferability

SECTION 29. Notwithstanding any general or special law to the contrary, the secretary of administration and finance may authorize the transfer of funds from any item of appropriation for fiscal year 2011 for any executive branch agency to any other item of appropriation for that agency or within its executive office. No transfer authorized by this section shall exceed 5 per cent of the amount appropriated for an item. The secretary of administration and finance shall notify the house and senate committees on ways and means not less than 15 days before a transfer pursuant to this section.

Summary:

This section authorizes limited transferability between line items in the same executive office, after 15 days' notice to the Legislature.

Special Education Rate Freeze

SECTION 30. Notwithstanding any general or special law to the contrary, the operational services division, which under section 22N of chapter 7 of the General Laws is responsible for determining prices for programs under chapter 71B of the General Laws, shall set those prices in fiscal year 2011 at the same level calculated for fiscal year 2010, except the prices for those programs for extraordinary relief, as defined in the division's regulations. Programs for which prices in fiscal year 2010 were lower than the full amount permitted by the division may charge in fiscal year 2010 the full price calculated for fiscal year 2011.

Summary:

This section freezes fiscal year 2011 special education school rates at fiscal year 2010 levels.

Stabilization Fund Transfer

SECTION 31. (a) Notwithstanding any general or special law to the contrary, the comptroller shall, on or before June 30, 2011, transfer \$175,000,000 to the General Fund from the Commonwealth Stabilization Fund, but the comptroller shall instead transfer a lesser amount if the secretary of administration and finance so requests in writing. The comptroller, in consultation with the secretary of administration and finance, may take the overall cash flow needs of the commonwealth into consideration in determining the timing of any transfer of funds. The comptroller shall provide a schedule of transfers to the secretary of administration and finance and to the house and senate committees on ways and means.

(b) Notwithstanding any general or special law to the contrary, during fiscal year 2011 the comptroller shall not transfer 0.5 per cent of the total revenue from taxes in the preceding fiscal year to the Commonwealth Stabilization Fund, as otherwise required by clause (a) of section 5C of chapter 29 of the General Laws.

Summary:

This section transfers \$175 million to the General Fund from the Commonwealth Stabilization Fund, but allows the Secretary of Administration and Finance to reduce the amount transferred. It also cancels for fiscal year 2011 the automatic deposit into the Stabilization Fund of 0.5 percent of total tax revenue.

Transfer Trust and Account Balances and Tobacco Settlement Payments

SECTION 32. (a) Notwithstanding any general or special law to the contrary, the comptroller shall transfer \$23,000,000 from the Commonwealth of Massachusetts Springfield Promise Program Expendable Trust to the General Fund after receiving a written request from the secretary of administration of finance.

(b) Notwithstanding any general or special law to the contrary, upon receiving a written request from the secretary of administration and finance, the comptroller shall transfer to the General Fund the unexpended balance of a fund, trust fund or other separate account, whether established administratively or by law, including a separate account established under section 6 of chapter 6A or section 4F of chapter 7 of the General Laws. The request shall certify that the secretary, in consultation with the comptroller, has determined this balance not to be necessary for the purposes for which it was made available.

(c) Notwithstanding section 1 of chapter 29D of the General Laws or any general or special law to the contrary, all payments received by the commonwealth in fiscal year 2011 pursuant to the master settlement agreement in the action known as Commonwealth of Massachusetts v. Philip Morris, Inc. et. al., Middlesex Superior Court, No. 95-7378, shall be deposited in the General Fund. The comptroller shall transfer all the earnings generated in fiscal year 2011 from the Health Care Security Trust, as certified under subsection (f) of section 3 of said chapter 29D, to the General Fund.

Summary:

This section authorizes transfer of certain trust and account balances, including part of the Springfield Promise Program Expendable Trust balance and also including fiscal year 2011 tobacco settlement payments and interest, to the General Fund.

Expedited Disposition of Certain Surplus State Land

SECTION 33. (a) In order to facilitate the reuse of the properties identified in subsection (b), and to generate non-tax revenues for the commonwealth, the commissioner of capital asset management and maintenance may, subject to sections 40E to 40J, inclusive, of chapter 7 of the General Laws but notwithstanding any other general or special law to the contrary, sell, lease for a term or terms of up to 99 years, including all renewals and extensions, or otherwise grant, convey, or transfer to 1 or more purchasers or lessees an interest in 1 or more of the properties listed in subsection (b), or portions of such properties, subject to this section and on the terms and conditions that the commissioner considers appropriate. The commissioner shall dispose of each property, or portions thereof, utilizing appropriate competitive processes and procedures. At least 30 days before the date on

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which bids, proposals, or other offers to purchase or lease a property, or any portion thereof, are due, the commissioner shall place a notice in the central register published by the state secretary under section 20A of chapter 9 of the General Laws stating the availability of the property, the nature of the competitive process and other information that he considers relevant, including the time, place and manner for the submission of bids, proposals and the opening thereof.

(b) This section shall apply to the following properties:-

(i) That certain parcel of land located in the town of Agawam at 702 South Westfield street, containing approximately 4 acres, together with any buildings and structures thereon, formerly known as the western Massachusetts criminal justice training center, described in Book 915, Page 453, located in the Hampden Registry of Deeds, and further shown on Agawam assessors map E4 and lot 12.

(ii) That certain parcel of land located in the town of Belchertown at 205 State street, containing approximately 7.5 acres, together with any buildings and structures thereon.

(iii) Those certain parcels of land located in the East Boston section of the city of Boston at 20 Addison street and 600 Chelsea street, together with any buildings and structures thereon, shown as Lot 1 and Lot 3 on a plan entitled "East Boston Electric Shop, Central Maintenance Facility, Plan of Land Located in East Boston, Massachusetts, Suffolk County," prepared by Bryant Associates, Inc., dated February 7, 2002, revision date May 28, 2002, on file with the division, with the benefit of certain easements and appurtenances thereto as shown on said plan.

(iv) Those certain parcels of land located in the Roxbury section of the city of Boston at 167 Centre street, containing approximately 8,496 square feet, together with any buildings and structures thereon, shown as Assessor's Block 55 bounded by Columbus avenue, New Heath street and Penryth street and as Assessor's Block 56 bounded by Columbus avenue, Centre street, and Penryth street.

(v) That certain parcel of land located in the city of Chelsea at 24 Hillside avenue, containing approximately 0.15 acres, together with any buildings and structures thereon.

(vi) That certain parcel of land located in the town of Danvers at 471 Maple street, containing approximately 0.367 acres, together with any buildings and structures thereon.

(vii) That certain parcel of land located in town of Dartmouth at 262 State road, containing approximately 0.75 acres, together with any buildings and structures thereon, formerly known as the state police barracks.

(viii) That certain parcel of land located in the town of Foxborough at 32 Payson road, together with any buildings and structures thereon,

(ix) That certain parcel of land located in the town of Foxborough on Walnut street, containing approximately 16 acres, together with any buildings and structures thereon.

(x) That certain parcel of land located in the city of Lawrence at 381 Common street, together with any buildings and structures thereon, formerly known as the Essex north district registry of deeds.

(xi) That certain parcel of land located in the town of Marlborough at 525 Maple street, containing approximately 0.95 acres, together with any buildings and structures thereon, formerly known as the registry of motor vehicles.

(xii) That certain parcel of land located in the town of Middleboro, containing approximately 34 acres of land, together with any buildings or structures thereon.

(xiii) That certain parcel of land located in the city of New Bedford at 593 Kempton street, together with any buildings and structures thereon, formerly known as the Bristol county jail, described in book 2659, page 15, located in the Bristol county registry of deeds, and further shown on New Bedford assessors map 57, lot 201.

(xiv) That certain parcel of land located in the city of New Bedford at 5 Sycamore street, together with any buildings and structures thereon formerly known as the New Bedford armory.

- (xv) That certain parcel of land located in the town of Norton between the east side of Hill street and the southerly side of South Washington street, containing approximately 45 acres, together with any buildings and structures thereon, being a portion of a parcel of land identified as "Area To Be Retained 63.9 Acres" shown on a plan entitled "Plan Showing Land In Norton, Mass. To Be Conveyed By The Commonwealth of Mass. To The Town Of Norton" on file with the division.
- (xvi) That certain parcel of land located in the town of Plymouth at 76 Court street together with any buildings and structures thereon, formerly known as the armory.
- (xvii) That certain parcel of land located in the city of Pittsfield at 359 East street, together with any buildings and structures thereon, formerly known as the "William Russell Allen House".
- (xviii) Those certain parcels of land located in the town of Shrewsbury, together with any buildings and structures thereon, known as the Glavin regional center.
- (xix) That certain parcel of land located in the city of Springfield at 288 Tyler street containing approximately 0.25 acres together with any buildings and structures thereon.
- (xx) That certain parcel of land located in the town of West Boylston containing approximately 20 acres, together with any buildings and structures thereon, formerly known as the county hospital.
- (xxi) Those certain parcels of land located at the former Lyman school for boys in the town of Westborough, together with any buildings and structures thereon, designated as parcels B, C, D, G and J, as generally defined and described in sections 2, 3, 4, 7 and 10 of chapter 660 of the acts of 1987.
- (c) The exact boundaries of each parcel described in subsection (b) shall be determined by the commissioner of capital asset management and maintenance after completion of a survey.
- (d) Notwithstanding any general or special law to the contrary, the grantee or lessee of any property identified in this section shall be responsible for all costs and expenses, including but not limited to, costs associated with any engineering, surveys, appraisals, and deed preparation related to the conveyance authorized pursuant to this section as such costs may be determined by the commissioner of capital asset management and maintenance.
- (e) The commissioner may retain or grant rights of way or easements for access, egress, utilities and drainage across each parcel and across other commonwealth property contiguous to each parcel, and the commonwealth may accept from any developer or developers rights of way or easements in roadways or across a parcel to be conveyed by deed or leased pursuant to this section for the purposes of access, egress, drainage and utilities as the commissioner considers necessary and appropriate to carry out this section.
- (f) Each parcel shall be conveyed by deed or leased by lease without warranties or representations by the commonwealth. Notwithstanding any general or special law to the contrary, the proceeds of all conveyances under this section shall be deposited in the General Fund.
- (g) Chapter 421 of the acts of 1991 and chapter 305 of the acts of 1994 are hereby repealed.
- (h) Notwithstanding any general or special law to the contrary, the commissioner of capital asset management and maintenance may transfer to the Massachusetts department of transportation care and custody of a portion of that certain parcel of land designated as parcel L in section 5 of chapter 660 of the acts of 1987. This transfer shall be subject to easements or restrictions that the commissioner may select, shall be without consideration, and shall not be subject to chapter 7 of the General Laws.

Summary:

This section authorizes DCAM to sell or lease 21 designated state properties that are surplus to current and foreseeable needs in order to generate non-tax revenue for the Commonwealth, to facilitate the productive use of the properties, and to return the properties to local property tax rolls. This section requires that any disposition be done using an open, competitive process.

DCR Rink and Pool Long-term Leases

SECTION 34. (a) Notwithstanding section 54 of chapter 7 of the General Laws, the division of capital asset management and maintenance, in this section called the division, on behalf of and in consultation with the department of conservation and recreation, in this section called the department, may, notwithstanding sections 40E to 40I, inclusive, of chapter 7 of the General Laws and using a competitive proposal process that the commissioner of the division considers necessary or appropriate, lease and enter into other agreements, for terms not to exceed 20 years, to or with 1 or more offerors who participate in that process, for 1 or more skating rinks, so as to provide for the continued use, operation, maintenance, repair and improvement of the following state-owned buildings and facilities together with the land and appurtenances associated with those buildings and facilities, comprising the following ice skating rinks and facilities of the department: Bajko Memorial Rink, Hyde Park District, Boston; Connell Memorial Rink, Weymouth; Devine Memorial Rink, Dorchester District, Boston; Emmons Horrigan O'Neill Memorial Rink, Charlestown District, Boston; Flynn Memorial Rink, Medford; LoConte Memorial Rink, Medford; Murphy Memorial Rink, South Boston District, Boston; Reilly Memorial Rink, Brighton District, Boston; Shea Memorial Rink, Quincy; Steriti Memorial Rink, Boston; Veterans Memorial Rink, Somerville; and, Ulin Memorial Rink, Milton.

There shall be an option for a 1-time renewal of the lease or extension for operations and maintenance services not exceeding an additional 5 years. This renewal or extension shall be at the discretion of the division in accordance with the original contract terms and conditions or contract terms and conditions more favorable to the commonwealth. All leases must contain a provision that requires the lessee to carry comprehensive general liability insurance with the commonwealth named as a co-insured, protecting the commonwealth against all personal injury or property damage within the rink and on the associated land during the term of the lease.

These leases and other agreements shall be on terms acceptable to the commissioner of the division after consultation with the commissioner of the department, and, notwithstanding any general or special law to the contrary, shall provide for the lessees to manage, operate, improve, repair and maintain the properties. Any such leases or other arrangements requiring capital improvements to be made to any buildings or surface areas shall include a description of the required capital improvements and, at minimum, performance specifications. The division, in consultation with the department, shall structure each lease or other agreement to minimize disturbance of the current rights of any tenants who may currently use any part of the rink or adjoining facilities, whether under a written lease or other arrangement. All consideration received from the leases or other agreements shall be payable to the department for deposit in the General Fund. The lessees of these properties shall bear all costs deemed necessary or appropriate by the commissioner of the division for the transaction, including without limitation, all costs for legal work, survey, title and the preparation of plans and specifications.

(b) The division, in consultation with and on behalf of the department, shall solicit proposals through a request for proposals, which shall, at a minimum, require each responsive bidder or offeror to provide the following: (1) a comprehensive list of all rinks, operated by that bidder in the last 4 years, (2) other facilities management or experience, (3) other skating or hockey management experience, and (4) required financial audits.

(c) The request for proposals shall include contractual provisions that provide that any benefits to the commonwealth and the costs of improvements and repairs made to the properties provided by the tenants or the recipients of the properties shall be taken into account as part of the consideration for such leases or other agreements; and shall also include, at a minimum, the following contractual terms and conditions to be incorporated into the contract: (1) a residential discount program, (2) reservation policies, (3) proposed reasonable rates that will ensure continued public access, (4) policies to encourage use of the rink by persons of all races and nationalities, (5) safety and security plans, (6) seasonal opening and closing dates, (7) hours of operation, and (8) in order to maintain stable and productive labor relations and to avoid interruption of the operation of the rinks and to preserve the safety and environmental conditions of those rinks, that all employees currently working on the operation and maintenance of the rinks, pool or wading/spray pools be offered employment by any party entering into a contract pursuant to this section. The request for proposals shall also include a contractual provision governing ice time allocation guidelines to the effect that ice time at rinks under the jurisdiction of the division of urban parks and recreation shall be allocated to user groups in the following order of priority: general public skating; non-profit youth groups; school hockey; youth groups other than non-profit youth groups; and adult organizations or informal groups. Ice time may be allocated at the discretion of the operator, provided that general public skating shall be booked at a minimum of 12 hours per week, with a range of times and days which reasonably allow for public skaters of all ages to participate in some public skating sessions. Every effort shall be made to balance the ice allocation needs of long-established youth organizations and newly

formed youth organizations in a manner that provides equal opportunity and equal access for youths of each gender.

Upon the execution of any agreements authorized by this section, the department shall reassign or relocate those employees who do not accept employment with the lessee, to comparable positions within the department subject to applicable collective bargaining agreements.

The inspector general shall review and approve any request for proposals issued by the division before issuance.

(d) Before the division, in consultation with the department, sends out any request for proposals under this section, the division shall hold open a pre-qualification period of at least 1 month for cities and towns, or a partnership of municipalities which share geographic boundaries as long the subject rink or rinks is or are located within the geographic area of the municipalities comprising the partnership, that desire to bid on rinks that are listed in this section and are located within the city or town. Any city or town or partnership of municipalities that desires to lease a rink under this section may submit materials for prequalification. This pre-qualification may include, but need not be limited to, the city's, town's, or partnership's ability to finance the capital improvements determined by the division to be necessary at each rink listed in this section and to manage, operate and maintain the properties. The division, in consultation with the department, shall determine whether a city, town, or partnership is prequalified within 15 days after the end of the prequalification period. If a city, town, or partnership is determined to be pre-qualified, that city or town or partnership shall be awarded the lease for that rink under the terms and conditions set forth in subsection (a) and the first paragraph of subsection (b). If a city, town, or partnership is determined to be pre-qualified, the city, town, or partnership shall pay nominal consideration for a lease subject to the required capital improvements, performance specifications, and other prequalification requirements and terms of the division and submitted proposal. The length of the lease shall be determined between the division and the city or town; but any existing municipal operator of a rink selected by a prior open and competitive procurement shall be deemed to be pre-qualified under this section.

The failure of any city or town to apply for pre-qualification under this subsection shall not prohibit that city or town from bidding under this section.

(e) The provisions of any general or special law or rule or regulation relating to the advertising, bidding or award of contracts, to the procurement of services, or to the construction and design of improvements shall not apply to any selected offeror that is awarded a contract under this section, except as provided in this section.

(f) Notwithstanding sections 40E to 40I, inclusive, and section 54 of chapter 7 of the General Laws, the division, on behalf of and in consultation with the department, and using a competitive proposal process that the commissioner of the division considers necessary or appropriate, may lease and enter into other agreements, for terms not to exceed 20 years, to or with 1 or more offerors who participate in that process, for 1 or more swimming pools or wading or spray pools, so as to provide for the continued use, operation, maintenance, repair and improvement of the following state-owned buildings and facilities together with the land and appurtenances associated with those buildings and facilities, comprising the following swimming or wading or spray pools of the department: Artesani Playground Wading Pool, Brighton; Reilly Memorial Swimming Pool, Brighton; Vietnam Veterans Memorial Swimming Pool, Chelsea; Neponset Landing II Spray Deck, Dorchester; Neponset Landing II Spray Deck, Hyde Park; Olsen Swimming and Wading Pool, Hyde Park; Johnson Playground Spray Deck, Jamaica Plain; Stony Brook Spray Deck, Jamaica Plain; Ryan Wading Pool, Mattapan; Cass Memorial Swimming Pool, Roxbury; Mission Hill Spray Deck, Roxbury; Lee Memorial Wading Pool, West End; McCrehan Memorial Swimming and Wading Pool, Cambridge; Veterans Memorial Swimming and Wading Pool (Magazine Beach), Cambridge; Gerald J. Mason Memorial Swimming Pool, Agawam; Sara Jane Sherman Memorial Swimming Pool, Chicopee; Philip Wehn Memorial Swimming Pool, Clinton; Allied Veterans Memorial Swimming and Wading Pool, Everett; Veteran's Memorial Swimming Pool, Fall River; Gustave Johnson Memorial Swimming Pool, Fitchburg; Freetown State Forest Wading Pool, Freetown/Assonet; Geisler Memorial Swimming Pool, Lawrence; Lt. Colonel Edward J. Higgins Swimming Pool, Lawrence; Leominster State Swimming Pool, Leominster; Raymond Lord Memorial Swimming Pool, Lowell; Thompson Memorial Pool, Ludlow; Holland Memorial Swimming and Wading Pool, Malden; Lloyd Memorial Swimming Pool, Melrose; Sen. P. Eugene Casey Memorial Swimming Pool, Milford; Dilboy Memorial Swimming and Wading Pool, Somerville; Latta Brothers Memorial Swimming and Wading Pool, Somerville; Andrew J. Petro Swimming Pool, Southbridge; John H. Thomas Memorial Swimming Pool, Springfield; Hall Memorial Swimming and Wading Pool, Stoneham; Bradley Palmer Wading Pool, Topsfield; Dealtry Memorial Swimming and Wading Pool, Watertown; Bennett Field Swimming Pool, Worcester; Dennis F.

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Shine Memorial Swimming Pool, Worcester; Connell Memorial Swimming Pool, Weymouth; Connors Memorial Pool, Waltham.

There shall be an option for a 1-time renewal of the lease or extension for operations and maintenance services not exceeding an additional 5 years. This renewal or extension shall be at the discretion of the division in accordance with the original contract terms and conditions or contract terms and conditions more favorable to the commonwealth. All leases must contain a provision that requires the lessee to carry comprehensive general liability insurance with the commonwealth named as a co-insured, protecting the commonwealth against all personal injury or property damage within swimming pools or wading or spray pools and on the associated land during the term of the lease.

These leases and other agreements shall be on terms acceptable to the commissioner of the division after consultation with the commissioner of the department, and, notwithstanding any general or special law to the contrary, shall provide for the lessees to manage, operate, improve, repair and maintain the properties. Any such leases or other arrangements requiring capital improvements to be made to any buildings or surface areas shall include a description of the required capital improvements and, at minimum, performance specifications. The division, in consultation with the department, shall structure each lease or other agreement to minimize disturbance of the current rights of any tenants who may currently use any part of the swimming pools or wading or spray pools or adjoining facilities, whether under a written lease or other arrangement. All consideration received from the leases or other agreements shall be payable to the department for deposit in the General Fund. The lessees of these properties shall bear all costs considered necessary or appropriate by the commissioner of the division for the transaction, including without limitation, all costs for legal work, survey, title and the preparation of plans and specifications.

(g) The division, in consultation with and on behalf of the department of conservation and recreation, shall solicit proposals through a request for proposals, which shall at a minimum require each responsive bidder or offeror to provide the following : (1) a comprehensive list of all swimming pools or wading or spray pools operated by that bidder in the last 4 years, (2) other facilities management or experience, (3) other swimming, facility maintenance and water recreation management experience, and (4) required financial audits.

(h) The request for proposals shall include contractual provisions that provide that any benefits to the commonwealth and the costs of improvements and repairs made to the properties provided by the tenants or the recipients of the properties shall be taken into account as part of the consideration for such leases or other agreements; and shall also include, at a minimum, the following contractual terms and conditions to be incorporated into the contract: (1) a residential discount program, (2) reservation policies, (3) proposed reasonable rates that will ensure continued public access, (4) policies to encourage use of the swimming pools and/or wading/spray pools by persons of all races and nationalities, (5) safety and security plans, (6) seasonal opening and closing dates, (7) hours of operation, and (8) in order to maintain stable and productive labor relations and to avoid interruption of the operation of the rinks and to preserve the safety and environmental conditions of those rinks, that all employees currently working on the operation and maintenance of the swimming pools or wading or spray pools be offered employment by any party entering into a contract under this section. The request for proposals shall also include a contractual provision as pertains to the balance the pool allocation needs of long-established youth organizations and newly formed youth organizations in a manner that provides equal opportunity and equal access for youths of each gender.

(i) With respect to the Cass Memorial Swimming Pool, Roxbury and the Connell Memorial Swimming Pool, Weymouth, both of which are maintained and operated in the same buildings as the associated public skating rink, preference shall be given to any proponent that agrees and offers to operate both public programs, and any lease for that facility shall provide that the lessee may sub-lease the operation of the public swimming program, but the sub-lessee shall maintain the operation of the swimming pool as a public swimming pool consistent with the request for proposals.

(j) Upon the execution of any agreements authorized by this section, the department shall reassign or relocate those employees who do not accept employment with the lessee, to comparable positions within the department subject to applicable collective bargaining agreements.

The inspector general shall review and approve any request for proposal issued by the division before issuance.

(k) Before the division, in consultation with the department, sends out any request for proposals under this section, the division shall hold open a pre-qualification period of at least 1 month for cities and towns, or a partnership of municipalities that share geographic boundaries as long the subject swimming pools or wading or spray pools are located within the geographic area of the municipalities comprising the partnership, that desire to bid on swimming pools or wading or spray pools that are listed in this section and are located within the city or town. Any city, town, or partnership of municipalities that desires to lease a swimming pools or wading or spray pools under this section may submit materials for prequalification. This pre-qualification may include, but need not be limited to, the city's, town's ,or partnership's ability to finance the capital improvements determined by the division to be necessary at each swimming pool or wading or spray pool listed in this section and to manage, operate and maintain the properties. The division, in consultation with the department, shall determine whether a city, town, or partnership is prequalified within 15 days of the end of the prequalification period. If a city, town, or partnership is determined to be pre-qualified, that city, town, or partnership shall be awarded the lease for that swimming pool or wading or spray pool under the terms and conditions set forth in subsection (f) and the first paragraph of subsection (g). If a city, town, or partnership is determined to be pre-qualified, the city, town, or partnership shall pay nominal consideration for a lease subject to the required capital improvements, performance specifications, and other prequalification requirements and terms of the division and submitted proposal. The length of the lease shall be determined between the division and the city or town; but any existing municipal operator of a swimming pool or wading or spray pool selected by a prior open and competitive procurement shall be considered to be pre-qualified under this subsection.

The failure of any city or town to apply for pre-qualification under this subsection shall not prohibit that city or town from bidding under this section.

(l) The provisions of any general or special law or rule or regulation relating to the advertising, bidding or award of contracts, to the procurement of services, or to the construction and design of improvements shall not apply to any selected offeror that is awarded a contract under this section, except as provided in this section.

Summary:

This section grants the Department of Conservation and Recreation the authority to enter into long-term leases for listed rinks and pools.

MassHealth and Commonwealth Care Dental Services

SECTION 35. (a) Notwithstanding section 53 of chapter 118E of the General Laws, for fiscal year 2011, the executive office of health and human services may within its sole discretion determine the extent to which to include within its covered services for adults the federally optional dental services that were included in its state plan or demonstration program in effect on January 1, 2002 and the dental services that were covered for adults in the MassHealth Basic program as of January 1, 2002.

(b) Notwithstanding subsection (a) of section 6 of chapter 118H of the General Laws, for fiscal year 2011, medically necessary dental services covered through health insurance plans procured by the board of the commonwealth health insurance connector for any resident with a household income that does not exceed 100 percent of the federal poverty level shall include preventative procedures but shall exclude those categories of services that are not provided through MassHealth.

Summary:

This section gives EOHHS and the Connector board the necessary discretion to make MassHealth and Commonwealth Care dental coverage or service limitation decisions.

UMass/EOHHS Interagency Services Agreements

SECTION 36. Notwithstanding any general or special law to the contrary, the executive office of health and human services, in this section called the executive office, acting in its capacity as the single state agency under Title XIX of the Social Security Act and as the principal agency for all of the agencies within the executive office

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and other federally assisted programs administered by the executive office, may enter into interdepartmental services agreements with the University of Massachusetts Medical School to perform activities that the secretary of the executive office, in consultation with the comptroller, determines are appropriate and within the scope of the proper administration of Title XIX and other federal funding provisions to support the programs and activities of the executive office. These activities may include: (1) providing administrative services including, but not limited to, activities such as providing the medical expertise to support or administer utilization management activities, determining eligibility based on disability, supporting case management activities and similar initiatives; (2) providing consulting services related to quality assurance, program evaluation and development, integrity and soundness and project management; and (3) providing activities and services for the purpose of pursuing federal reimbursement or avoiding costs, third party liability and recouping payments to third parties. Federal reimbursement for any expenditures made by the University of Massachusetts Medical School relative to federally-reimbursable services the university provides under these interdepartmental service agreements or other contracts with the executive office shall be distributed to the university and recorded distinctly in the state accounting system. The secretary may negotiate contingency fees for activities and services related to the purpose of pursuing federal reimbursement or avoiding costs and the comptroller shall certify these fees and pay them upon the receipt of this revenue, reimbursement or demonstration of costs avoided. Contracts for contingency fees shall not extend longer than 3 years and shall not be renewed without prior review and approval from the executive office for administration and finance. The secretary shall not pay contingency fees in excess of \$40,000,000 for state fiscal year 2011; provided, however, that contingency fees paid to the University of Massachusetts Medical School under the terms of any interagency service agreement for recoveries related to the special disability workload projects shall be excluded from that \$40,000,000 limit for fiscal year 2011. The secretary of the executive office shall submit to the secretary of administration and finance and the senate and house committees on ways and means a quarterly report detailing the amounts of the agreements, the ongoing and new projects undertaken by the university, the amounts spent on personnel, and the amount of federal reimbursement and recoupment payments that the university collected.

Summary:

This section enables the Executive Office of Health and Human Services to contract services to the University of Massachusetts, to perform them in the most cost-efficient manner.

Initial Gross Payments to Qualifying Acute Care Hospitals

SECTION 37. Notwithstanding any general or special law to the contrary, on or before October 1, 2010 and without further appropriation, the comptroller shall transfer from the General Fund to the Health Safety Net Trust Fund established pursuant to section 35 of chapter 118G of the General Laws, in this section called the fund, the greater or \$45,000,000 or one-twelfth of the total expenditures to hospitals and community health centers required pursuant to this act, for the purposes of making initial gross payments to qualifying acute care hospitals for the hospital fiscal year beginning October 1, 2010. These payments shall be made to hospitals before, and in anticipation of, the payment by hospitals of their gross liability to the fund. The comptroller shall transfer from the fund to the General Fund, not later than June 30, 2011, the amount of the transfer authorized by this section and any allocation of that amount as certified by the director of the health safety net office.

Summary:

This section provides for the annual transfer from the General Fund of "seed money" to make initial gross payments to acute hospitals. This seed money is later repaid to the General Fund.

Nursing and Resident Care Facility Base Year

SECTION 38. Notwithstanding any general or special law to the contrary, nursing facility and resident care facility rates effective July 1, 2010 under section 7 of chapter 118G of the General Laws may be developed using the costs of calendar year 2005.

Summary:

This section changes to 2005 the base year for setting fiscal year 2011 nursing and resident care facility rates.

Life Sciences Transfer from FY10 Surplus

SECTION 39. Notwithstanding any general or special law to the contrary, after complying with clause (a) of section 5C of chapter 29 of the General Laws, the comptroller shall dispose of the consolidated net surplus in the budgetary funds for fiscal year 2010 as follows: (i) the comptroller shall transfer \$10,000,000 from the General Fund to the Massachusetts Life Sciences Investment Fund established by section 6 of chapter 23I of the General Laws; and (ii) the remaining balance shall be transferred from the General Fund to the Commonwealth Stabilization Fund.

Summary:

This section transfers \$10 million of any fiscal year 2010 surplus to the Massachusetts Life Sciences Investment Fund.

Suspension of Tourism Formula

SECTION 40. Notwithstanding any general or special law to the contrary, the formula for application of funds provided in section 35J of chapter 10 of the General Laws shall not apply in fiscal year 2011.

Summary:

This section suspends the statutory tourism fund formula for fiscal year 2011. This section has been routine in recent budgets.

Study Commission on State School Aid Formula

SECTION 41. (a) There shall be a special commission to study the state school aid formula established by chapter 70 of the General Laws.

(b) The commission shall consist of the secretary of education, who shall chair the commission, the commissioner of education or his designee, the commissioner of early education or her designee, the commissioner of higher education or his designee, the secretary of administration and finance or his designee, the house and senate chairs of the joint committee on education, the house and senate chairs of the joint committee on higher education, the chairs of the house and senate committees on ways and means or their designees, a representative chosen by the speaker of the house of representatives, a representative chosen by the president of the senate, a representative chosen by the house minority leader, a representative chosen by the senate minority leader, a representative of each of the following organizations: Massachusetts Municipal Association, Massachusetts Teachers Association, Massachusetts Federation of Teachers, Massachusetts Association of School Superintendents, Massachusetts Association of School Committees, Massachusetts Association of Elementary School Principals, Massachusetts Association of Secondary School Principals, Massachusetts Association of School Business Officers, the Suburban Coalition, the Massachusetts Budget and Policy Center, the Massachusetts Taxpayers Foundation, the Massachusetts Business Alliance for Education, Stand for Children, Early Education for All, the Federation of Children with Special Needs, and 7 members to be selected by the governor.

(c) The commission's study shall include, but not be limited to, a review of the adequacy of the foundation budget, consideration of the appropriate statewide targets for local contribution and state shares of the foundation budget, the possibility of including competitive funding as part of the overall school funding package, the advisability of providing the department of elementary and secondary education with the power to direct spending or otherwise place conditions on district and school spending in underperforming districts or schools, the means by which spending authority might be delegated to the school level through the formula or other regulatory means, the accuracy of the current inflation measures used in the chapter 70 formula, the source of and potential remedies for any existing discrepancies between the fiscal demands placed upon and the fiscal assistance provided to municipalities and school districts with similar fiscal capacity and educational responsibilities, including those placed and provided under chapter 70, a consideration and evaluation of all the financial resources made available to schools and districts, from all sources, including federal funds, and how they relate to student learning

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and educational opportunity, a review of successful educational programs in schools and school districts that achieve their success at relatively lower per pupil costs when compared with school districts serving student populations with similar academic and socio-economic characteristics and an assessment of the possibility of replicating such programs in other schools and school districts, and any other issues identified as important by the commission.

(d) The commission shall report its conclusions in writing not later than December 1, 2010 to the governor, the secretary of administration and finance, the speaker of the house of representatives, the president of the senate, and the house and senate chairs of the joint committee on education. The report shall include a list of items requiring further study and evaluation through a contracted adequacy study or other academic and statistical research; a recommendation about the scope, goals, recommended budget and preferred methodology of any further study; Any such additional study shall be completed not later than December 1, 2011.

Summary:

This section establishes a special commission to study the "Chapter 70" state school aid formula.

Effective Date

SECTION 42. Except as otherwise specified, this act shall take effect on July 1, 2010.

Summary:

This section makes this bill effective on July 1, 2010, unless another specific effective date is provided.

